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September 26, 2003

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By Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Alva, Mooreland, Tishomingo, Tuttle,
and Woodward, Oklahoma)
MM Docket No. 98-155; RM-9082; RM-9133

Dear Ms. Dortch:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., are an original and four copies of its "Supplement to Application for Review," filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
Attorneys for

Chisholm Trail Broadcasting Co., Inc.

By: 
Andrew S. Kersting

Enclosure

cc Certificate of Service (w/ encl.) (by hand & first-class mail)

074

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 98-155
Table of Allotments,) RM-9082
FM Broadcast Stations) RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)
and Woodward, Oklahoma))

To The Commission

SUPPLEMENT TO
APPLICATION FOR REVIEW

Chisholm Trail Broadcasting Co., Inc. ("Chisholm Trail"), by counsel and pursuant to Sections 1.41 and 1.115 of the Commission's rules, 47 C.F.R. §§1.41 and 1.115, hereby supplements its pending Application for Review, filed September 12, 2002, requesting Commission review of the Assistant Chief, Audio Division's *Memorandum Opinion and Order*, 17 FCC Rcd 14722 (Aud. Div. 2002) ("*Second MO&O*") in the above-captioned proceeding. In support of this supplement, the following is stated:

I. Introduction.

In its Application for Review, Chisholm Trail demonstrated, *inter alia*, that Ralph Tyler ("Tyler") made a series of misrepresentations to the Commission in seeking to obtain approval of his proposal to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma and modify the license of Station KTSI to specify Tuttle as its community of license. Tyler's numerous misrepresentations included misleading the Commission into believing that there was a second operating radio station in Tishomingo as of the comment deadline in this proceeding when, in fact, there was not. Although Tyler's misrepresentations were first brought to the

Commission's attention in the context of this allotment proceeding on November 3, 1998,¹ no action was taken against Tyler for his disqualifying misconduct until last month. The Commission's Enforcement Bureau initiated an enforcement proceeding against Tyler to determine whether "Tyler misrepresented facts to, or lacked candor with, the Commission regarding Station KTSH(FM), violated Sections 1.17 and/or 73.1015 of the Commission's rules and engaged in related misconduct." See *Order*, DA 03-2598, 2003 FCC LEXIS 4487 (released August 12, 2003) ("*Order*")²

After a series of negotiations between the Enforcement Bureau and Tyler, Tyler entered into a Consent Decree in which he stipulated that he violated Sections 1.17 and 73.1015 of the Commission's rules in his written filings, oral representations, and in responding to Commission inquiries regarding, *inter alia*, the operational status of KTSH. See Consent Decree at ¶10. In "acknowledgement of, and acceptance of responsibility for, his wrongdoing,"³ Tyler agreed to voluntarily surrender the KTSH license for cancellation and request the dismissal, with prejudice, of all of his applications and pleadings currently pending before the Commission, "including his application to modify the KTSH(FM) authorization to specify Tuttle as the community of license." *Id.* at ¶11. Tyler also agreed to divest his interests in Stations KOCY(AM), Chickasha, Oklahoma and KWCO-FM, Chickasha, Oklahoma.⁴ *Id.* at ¶12.

In light of Tyler's surrender of the KTSH license for cancellation and the dismissal of all of his applications and pleadings concerning the station, there no longer is an expression of interest in the proposal to reallocate Channel 259C3 from Tishomingo to Tuttle

¹ See Chisholm Trail's Reply Comments filed November 3, 1998.

² A copy of the Enforcement Bureau's *Order* and accompanying Consent Decree are appended hereto.

³ *Order* at ¶3.

⁴ Tyler is the sole owner of Tyler Enterprises, LLC, licensee of radio stations KOCY(AM) and KWCO-FM.

II. Section 307(b) of the Communications Act Directs the Commission to Allocate Radio Service Only to the Extent There is a Demand for Service.

The Commission's authority to allocate broadcast frequencies derives from Section 307(b) of the Communications Act of 1934, as amended (the "Act"), which provides as follows.

In considering applications for licenses, and modifications and renewals thereof, *when and insofar as there is demand for the same*, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

47 U.S.C. §307(b) (emphasis added)

The U.S. Court of Appeals for the District of Columbia Circuit has observed that the facial language of Section 307(b) applies, *inter alia*, "to changes in the structure of spectrum allocation, such as grants of new licenses or modifications," and adjures the Commission to "consider the propriety of allocation 'when and insofar as there is demand' for service." *Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1046, 1051, n.39 (D.C. Cir. 1977). While acknowledging that the purpose of Section 307(b) is to "secure to the people of the several states and communities a fair, efficient and equitable distribution of radio service," the D.C. Circuit also has noted that the Commission's discretion under Section 307(b) "is not absolute." The Commission has been directed to implement the statutory purpose "in considering applications for licenses 'when and insofar as there is demand for the same.'" *Heitmeyer v. FCC*, 95 F.2d 91, 100 (D.C. Cir. 1937). See also *Deletion of AM Application Acceptance Criteria in Section 73.37(e) of the Commission's Rules*, 1985 FCC LEXIS 3763 ¶11 (1985) (NPRM) ("Section 307(b) of the Act is quite clear as it refers to equitable distribution of facilities 'insofar as there is demand for the same'").

As reflected above, the express language of Section 307(b) and the D.C. Circuit's interpretation of that statutory language make clear that the Commission's discretion under

Section 307(b) is limited such that it has been directed to allocate broadcast frequencies only to the extent that there is a demand for service

III. The FCC's Longstanding Policy Has Been to Allocate Broadcast Service in a Manner Consistent With Section 307(b).

Consistent with the congressional directive contained in Section 307(b) of the Act, the Commission's policy in allotment rulemaking proceedings is to refrain from allotting a new channel to a community absent an expression of interest. The full Commission articulated its rationale for this policy in *Santa Isabel, Puerto Rico and Christiansted, Virgin Islands*, 3 FCC Rcd 2336 (1988) (subsequent history omitted). In *Santa Isabel*, a rulemaking petition conflicted with an application to upgrade an existing station in San Juan, Puerto Rico. Although the Commission issued a *Notice of Proposed Rule Making* proposing the allotment of a new channel at Santa Isabel, the petitioner failed to file comments expressing a continuing interest in the allotment. The Commission strictly enforced its procedural rules and dismissed the petition. In doing so, the Commission explained as follows:

Absent an expression of interest, a newly allotted channel could lie vacant after the Commission had expended limited resources conducting a rule making proceeding and after parties had submitted comments regarding a proposed channel. An expression of interest is all the more important where the requested allotment action would conflict with another application. A further allotment under these circumstances would not only waste Commission and participants' resources, it could preclude additional or improved service elsewhere with no countervailing service benefit to the public. Thus, the requirement of an expression of interest is reasonable and necessary to the efficient conduct of the agency's business, and the Commission has good reason to preserve the integrity of its processes by requiring adherence.

3 FCC Rcd at 2337. The Commission has consistently followed the policy expressed in *Santa Isabel*. See, e.g., *Hollis, Oklahoma*, 11 FCC Rcd 14561 (Alloc. Branch 1986); *Franklin and White Castle, Louisiana*, 11 FCC Rcd 8662 (Alloc. Branch 1996); *Wyeville, Wisconsin*, 10 FCC Rcd 9972 (Alloc. Branch 1995).

The requirement of demonstrating a continuing expression of interest before a new channel will be allotted applies with equal force in cases where the Commission has issued a *Report and Order* allotting a new channel, but the decision has not become final. In *Oakdale and Campti, Louisiana*, 7 FCC Rcd 7600 (Pol. & Rules Div. 1992), the Commission was confronted with conflicting allotment proposals to either (i) allot a new channel to Campti, Louisiana, which would provide that community with its first local transmission service, or (ii) upgrade an existing service at Oakdale, Louisiana. The Commission issued a *Report and Order* allotting a new channel to Campti because providing that community with its first local service would serve a higher allotment priority than the proposal to upgrade an existing service at Oakdale. However, the proponent subsequently failed to respond to a petition for reconsideration seeking the deletion of the new allotment at Campti and did not file an application for the new channel during the applicable filing window. On reconsideration, the Commission determined that these facts constituted an abandonment of the petitioner's expression of interest in the new allotment. No other party had expressed an interest in the Campti allotment either in the rulemaking proceeding or by filing an application prior to the close of the filing window. As a result, the Commission followed the policy expressed in *Santa Isabel* and held that the abandonment of an expression of interest warranted the deletion of the new allotment at Campti.

... [W]here a timely petition for reconsideration has been filed seeking the deletion of an allotment made in a proceeding and there has been an abandonment of the expression of interest in the new allotment as exhibited by the failure of the proponent to object to the deletion request and the absence of any applications for the channel filed during the filing window, we believe the public interest is better served by the deletion of the vacant allotment and the adoption of the alternate proposal.

7 FCC Rcd at 7601

The Commission reached a similar conclusion in *Wickenburg, Bagdad and Aguila, Arizona*, 16 FCC Rcd 15793 (Alloc. Branch 2001) (subsequent history omitted). *Wickenburg*

involved proposals to (i) drop in a new channel allotment at Wickenburg, or (ii) substitute an alternative channel for an existing allotment in the same community. After issuing a *Report and Order* allotting a new FM service to Wickenburg, the Commission modified its decision on reconsideration and deleted the new drop-in allotment because no party had opposed a request to delete the new allotment, nor had any party expressed an interest in the new channel at Wickenburg. *Id.* at 15794. See also *Mount Pleasant and Bogata, Texas*, 16 FCC Rcd 7858 (Alloc. Branch 2001) (Commission granted reconsideration petition requesting rescission of new channel allotment at Bogata, Texas where the proponent withdrew its expression of interest).

The Commission's policy of refraining from making a new allotment to a community in the absence of an expression of interest also has been applied on reconsideration of proposals to change a station's community of license. In *Grants and Milan, New Mexico*, 15 FCC Rcd 20293 (Alloc. Branch 2000), the *Report and Order* (15 FCC Rcd 18018 (Alloc. Branch 2000)) granted the request of Don Davis, former licensee of Station KXXQ(FM), Grants, New Mexico, to reallocate Channel 264A from Grants to Milan, as the community's second local transmission service. After the *Report and Order* was issued, Station KXXQ was assigned to a new licensee who filed a petition for reconsideration stating that it did not wish to effectuate the reallocation of Channel 264A, but would rather continue to serve Grants. The Commission acknowledged that the reconsideration petition effectively withdrew the prior licensee's expression of interest in the reallocation proposal. Therefore, the Commission set aside its earlier decision granting the change of community. *Id.* at 20293. See also *DeRuyter and Chittenango, New York*, 14 FCC Rcd 4411 (Alloc. Branch 1999) (Commission dismissed reallocation proposal where, after the close of the record, the petitioner filed a letter stating that it no longer intended to pursue its proposal to change the community of license of its station which would have provided the community of Chittenango with its first local transmission service).

IV. The Reallocation of Channel 259C3 From Tishomingo to Tuttle Should Be Rescinded.

In light of the *Order* issued by the Commission's Enforcement Bureau and the accompanying Consent Decree pursuant to which Tyler has surrendered the KTSH license for cancellation and dismissed all of his applications and pleadings concerning the station,⁵ there no longer is an expression of interest in the proposal to reallocate Channel 259C3 from Tishomingo to Tuttle. As demonstrated above, Section 307(b) of the Act requires the Commission to "consider the propriety of an allocation" only to the extent there is a demand for service.⁶ In the absence of a continuing expression of interest, the Commission no longer has the requisite statutory authority under Section 307(b) to consider reallocating Channel 259C3 from Tishomingo to Tuttle because there no longer is a demand for service at Tuttle. Thus, the question whether the reallocation of Channel 259C3 to Tuttle might provide greater comparative benefits under a Section 307(b) comparative analysis, or serve a higher allocation priority than maintaining the allocation at Tishomingo, is not before the Commission and cannot be reached without violating the express language of Section 307(b) of the Act. *See Santa Isabel*, 3 FCC Rcd at 2338 (full Commission did not reach the issue of the comparative 307(b) benefits of the two proposals because it determined that consideration of the Santa Isabel proposal was not appropriate).⁷

⁵ See Consent Decree at ¶11.

⁶ *Pasadena Broadcasting Company v. FCC*, 555 F.2d at 1051 n.39.

⁷ In another context, the Commission reallocated a channel back to its original community without any Section 307(b) analysis. In *Spencer and Webster, Massachusetts*, 14 FCC Rcd 2114 (Alloc. Branch 1999), the Commission granted a proposal filed pursuant to Section 1.420(i) of the Commission's rules and reallocated Channel 255A from Webster to Spencer, Massachusetts, because the reallocation would provide Spencer with its first local transmission service. In doing so, the Commission modified the license of Station WORC-FM to specify Spencer as its new community of license. *Id.* A petition for rulemaking was subsequently filed, however, which demonstrated that there was no available transmitter site that would enable WORC-FM to comply with the Commission's technical rules and local zoning requirements at Spencer, and, thus, the petition sought to reallocate Channel 255A back to Webster. The Commission granted the subsequent Section 1.420(i) proposal and reallocated WORC-FM back to its original community of license without conducting any comparative analysis of the two communities under Section 307(b) of the Act. *See Spencer and Webster, Massachusetts*, 15 FCC Rcd 10136 (Alloc. Branch 2000).

Moreover, Tyler filed his allotment proposal in this proceeding pursuant to Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon granted in part*, 5 FCC Rcd 7094 (1990). Thus, no other expressions of interest in the allotment of Channel 259C3 at Tuttle can be considered in this proceeding.⁸ Assuming, *arguendo*, that a third party were to express an interest in a new allotment at Tuttle, any such interest could not be considered in this proceeding because it would be grossly untimely and would prejudice Chisholm Trail, who has opposed the reallocation of Channel 259C3 at Tuttle. *See Santa Isabel*, 3 FCC Rcd at 2338.

Consistent with the statutory directive contained in Section 307(b), the Commission cannot assume that an expression of interest in a new allotment at Tuttle continues to exist when that interest has been withdrawn. As the Commission recognized in *Santa Isabel*, the new allotment at Tuttle could lie vacant for a considerable period of time and is likely to preclude additional or improved service in other communities with no countervailing service benefit to the public. *See Santa Isabel*, 3 FCC Rcd at 2337. Therefore, in accordance with Section 307(b) of the Act and the Commission's longstanding policy of refraining from making a new allotment in the absence of an expression of interest, the Commission should preserve the integrity of its administrative processes and strictly adhere to its procedural rules just as it did in *Santa Isabel* by rescinding the reallocation of Channel 259C3 from Tishomingo to Tuttle and dismissing Tyler's allotment proposal. *Santa Isabel*, 3 FCC Rcd at 2337; *Oakdale and Campti, Louisiana*, 7 FCC Rcd at 7600-7601; *Grants and Milan, New Mexico*, 15 FCC Rcd at 20293.

⁸ *See Notice of Proposed Rule Making and Order to Show Cause* in this proceeding, 13 FCC Rcd 25352, 25353-54 (Alloc. Branch 1998).

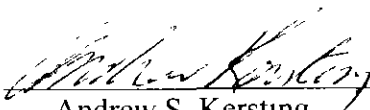
WHEREFORE, in light of the foregoing, Chisholm Trail respectfully requests that its Application for Review be granted, that the *Second MO&O* be reversed or rescinded, and that the proposal to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma be dismissed with prejudice.

Respectfully submitted,

Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037-1526
(202) 785-9700

Attorneys for

CHISHOLM TRAIL
BROADCASTING CO., INC.

By 
Andrew S. Kersting

September 26, 2003

Order Regarding KTSH(FM), Tishomingo, Oklahoma

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No EB-01-IH-0549
)	FRN 0003731411
RALPH H. TYLER)	Facility ID No 58348
)	
Licensee of Station KTSH(FM))	
Tishomingo, Oklahoma)	

ORDER

Adopted: August 11, 2003

Released: August 12, 2003

By the Chief, Enforcement Bureau

1 In this *Order*, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Ralph H Tyler ("Tyler") The Consent Decree terminates an investigation by the Enforcement Bureau into whether Tyler misrepresented facts to, or lacked candor with, the Commission regarding Station KTSH(FM), violated Sections 1.17 and/or 73.1015 of the Commission's rules¹ and engaged in related misconduct

2 The Enforcement Bureau and Tyler have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation A copy of the Consent Decree is attached hereto and incorporated herein by reference

3 Based upon the record before us, and in light of Tyler's voluntary surrender of the KTSH(FM) authorization and acknowledgement of, and acceptance of responsibility for, his wrongdoing, we conclude that no substantial or material questions of fact exist as to whether Tyler possesses the basic qualifications, including those related to character, to hold, obtain, assign or transfer any FCC license or authorization

4 After reviewing the terms of the Consent Decree, we believe that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5 Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) and (j) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to this *Order* **IS ADOPTED**

6 **IT IS FURTHER ORDERED** that the Enforcement Bureau's investigation of Tyler

¹ 47 C.F.R. §§ 1.17, 73.1015

² 47 U.S.C. §4(i) and (j)

³ 47 C.F.R. §§ 0.111, 0.311

IS TERMINATED.

7 **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Ralph H. Tyler, 5101 South Shields Boulevard, Oklahoma City, Oklahoma 73129, and to Lee W. Shubert, Esq., KMZ Rosenman, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, D.C. 20007

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

I. Introduction

1 The Enforcement Bureau of the Federal Communications Commission and Ralph H. Tyler hereby enter into a Consent Decree resolving conduct by Tyler regarding Station KTSH(FM), Tishomingo, Oklahoma, in violation of Sections 1.17 and/or 73.1015 of the Commission's rules.¹

2 For purposes of this Consent Decree, the following definitions shall apply:

- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree.
- (c) "Bureau" means the FCC's Enforcement Bureau,
- (d) "Commission" or "FCC" means the Federal Communications Commission,
- (e) "Effective Date" means the date on which the FCC releases the Adopting Order,
- (f) "Execution Date" means the date on which this Consent Agreement is executed by the Parties,
- (g) "Final Order" means the status of the Adopting Order after the period for administrative and judicial review has lapsed,
- (h) "MMB" means the FCC's Mass Media Bureau, the predecessor bureau to the Media Bureau,
- (i) "Parties" means Ralph H. Tyler and the Bureau, each being a separate "Party,"
- (j) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations,
- (k) "SCOCBI" means South Central Oklahoma Christian Broadcasters, Inc., former permittee of Station KTSH(FM), Tishomingo, Oklahoma,
- (l) "TEL" means Tyler Enterprises, L.L.C., licensee of Stations KOCY(AM) and KWCO(FM), Chickasha, Oklahoma, and
- (m) "Tyler" means Ralph H. Tyler, licensee of Station KTSH(FM), Tishomingo, Oklahoma, and the sole member and Operating Manager of TEL,

II. Background

3 As the result of allegations made to the MMB regarding Tyler's activities in connection with Station KTSH(FM), Tishomingo, Oklahoma, the Bureau conducted an investigation of misconduct by Tyler involving, *inter alia*, misrepresentations and/or lack of candor with the Commission concerning the

¹ 47 C.F.R. §§ 1.17, 73.1015

operational status of Station KTSH(FM) and the amount of consideration that Tyler had agreed to pay to SCOCBI for the construction permit for Station KTSH(FM) ²

III. Terms of Settlement

4 The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order

5 The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order Upon such release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order

6 Tyler agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree

7 The parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Tyler and the Bureau concerning Tyler's violations of the Commission's rules discussed herein

8 In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate its current investigation

9 In consideration of the Bureau's termination of its investigation into these matters, Tyler agrees to the terms set forth herein

10 Tyler hereby stipulates that he has violated sections 1.17 and 73.1015 of the Commission's rules in his written filings and oral representations and in response to Commission inquiries regarding the operational status of Station KTSH(FM) and the nature of his agreement to obtain the station's permit from SCOCBI

11 Tyler agrees to surrender for cancellation the license for Station KTSH(FM), Tishomingo, Oklahoma (FCC Facility ID No. 58348), and to request the dismissal, with prejudice, of all of his applications and pleadings currently pending before the Commission regarding the station, including his application to modify the KTSH(FM) authorization to specify Tuttle as the community of license,³ on or before the Execution Date and to cease broadcast operations of KTSH(FM) at or before 12 00 midnight on the Effective Date

12 Tyler further agrees to divest his other broadcast interests in Stations KOCY(AM) (FCC Facility ID No. 6747) and KWCO-FM (FCC Facility ID No. 6750), Chickasa, Oklahoma, arising from his ownership of TEL To that end, not more than thirty (30) days after the Execution Date, Tyler, on behalf of TEL, shall file with the Commission the requisite application(s) for approval of the assignment of the licenses for the aforementioned Chickasa stations or of the transfer of control of TEL by which Tyler shall fully and completely divest his interest in such stations and/or in TEL Upon Commission approval, Tyler will consummate such assignment or transfer of control Upon his divestment of such interests and his surrender of the license for Station KTSH(FM), Tyler will have no further involvement, *de facto* or *de jure*, in the ownership, business, management or operation of those or any other broadcast stations

² See generally MM Docket No. 98-155, Letter of Inquiry from Norman Goldstein, Chief, Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau to Ralph Tyler and South Central Oklahoma Christian Broadcasting, Inc., dated May 7, 1999, and responses thereto, File Nos. BLED-981002KA, BMPED-20010126ABC and BPH-20021002ADB

³ File No. BPH-20021002ADB

13 Tyler agrees that he is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Tyler fails to satisfy any condition or Commission rule, in the absence of Commission alteration of the condition or rule, he will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment or forfeitures.

14 The Bureau agrees that, in the absence of material new evidence, it will not, on its own motion, initiate or recommend to the Commission, any new proceeding, formal or informal, regarding Tyler's conduct that is the subject of this Consent Decree. The Bureau further agrees that, in the absence of material new evidence, it will not, on its own motion, take any further enforcement action against Tyler for any alleged violation of the Commission's rules in connection with such conduct which occurred prior to the effective date of this Consent Decree, including any action to revoke the broadcast licenses held by TEL based upon such conduct, except as consistent with the provisions of this Consent Decree. The Bureau also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the execution date of this Consent Decree or the existence of this Consent Decree to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against Tyler or TEL with respect to Tyler's basic qualifications, including his character qualifications, to be or continue to be a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against Tyler or any entity in which he holds an interest, including, but not limited to TEL, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's Rules as consistent with the provisions of this Consent Decree.

15 Tyler waives any and all rights he may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

16 Any violation of this Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

17 If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither Tyler nor the FCC shall contest the continuing validity of the Consent Decree or Adopting Order. Tyler retains the right to challenge the Bureau interpretation of the Consent Decree or any terms contained therein.

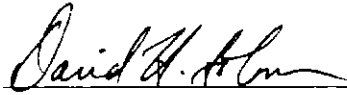
18 Tyler hereby agrees to waive any claims he may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

19 In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

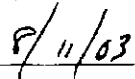
20 The Parties agree that the terms and conditions of this Consent Decree shall remain in effect for twenty-four (24) months from the Effective Date of this Consent Decree. The Parties further agree that any provision of this Consent Decree that would require Tyler to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order.

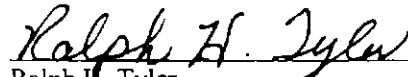
21 This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

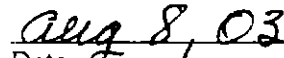


David H. Solomon
Chief, Enforcement Bureau


Date



Ralph H. Tyler


Date

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2003, a copy of the foregoing
“Supplement to Application for Review” was hand-delivered or sent by first-class mail, postage
prepaid, to the following

The Honorable Michael Powell*
Chairman
Federal Communications Commission
The Portals II, Room 8-B201
445 Twelfth Street, S W
Washington, DC 20554

The Honorable Kathleen Abernathy*
Commissioner
Federal Communications Commission
The Portals II, Room 8-A204
445 Twelfth Street, S W
Washington, DC 20554

The Honorable Michael Copps*
Commissioner
Federal Communications Commission
The Portals II, Room 8-A302
445 Twelfth Street, S W
Washington, DC 20554

The Honorable Kevin Martin*
Commissioner
Federal Communications Commission
The Portals II, Room 8-C302
445 Twelfth Street, S W
Washington, DC 20554

Peter H Doyle, Chief*
Audio Division
Media Bureau
Federal Communications Commission
Room 2-A267
The Portals II
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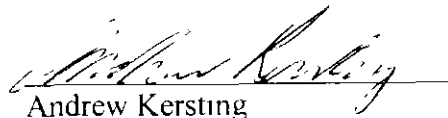
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